

**THIS OPINION WAS NOT WRITTEN FOR PUBLICATION**

The opinion in support of the decision being entered today  
(1) was not written for publication in a law journal and  
(2) is not binding precedent of the Board.

Paper No. 16

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

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***Ex parte*** MYRON C. NOBLE

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Appeal No. 97-1153  
Application 08/335,939<sup>1</sup>

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ON BRIEF

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Before McCANDLISH, ***Senior Administrative Patent Judge***, and  
COHEN and MEISTER, ***Administrative Patent Judges***.

MEISTER, ***Administrative Patent Judge***.

**DECISION ON APPEAL**

Myron C. Noble (the appellant) appeals from the final  
rejection of claims 1-3 and 6-8. Claims 10-12, the only other  
claims remaining in the application, stand allowed.

We REVERSE.

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<sup>1</sup>Application for patent filed November 8, 1994.

Appeal No. 97-1153  
Application 08/335,939

The appellant's invention pertains to a clamping apparatus for connecting first and second members together. Independent claim 1 is further illustrative of the appealed subject matter and a copy thereof may be found in EXHIBIT A to the appellant's brief.

The references relied on by the examiner are:

Daniell	3,005,614	Oct. 24, 1961
Poitier <sup>2</sup> (Belgium)	495,157	Aug. 01, 1950

Claims 1-3 and 6-8 stand rejected under 35 U.S.C. § 103 as being unpatentable over Poitier in view of Daniell. According to the examiner:

Potier [sic, Poitier] shows the claimed invention in Figs. 10 and 11, including a disc-like clamping member a1, four slots (see enclosed copy of Fig. 11)<sup>3</sup>, first and second fastener means, and third and fourth fastener means. Potier [sic, Poitier], however, lacks slots which have a length greater than their width, separate first and second fastener means, separate third and fourth fastener means and separate clamping links. Potier [sic, Poitier] teaches in Fig. 42, arcuate slots in the disc-like clamping member.

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<sup>2</sup>Translation attached.

<sup>3</sup> In support of this rejection the examiner has attached a copy of Fig. 11 of Poitier, superimposing labeling thereon to identify the structure which the examiner believes corresponds to the first through fourth slots and the first through fourth fastener means.

Daniell teaches the use of separate fastener means 28, 24 with a clamping link 22. It would have been obvious

to a person of ordinary skill in the art at the time the invention was made to modify Potier [sic, Poitier] to have slots which have a length greater than their width, separate first and second fastener means, separate third and fourth fastener means and separate clamping links in view of Daniell in order to provide adjustability of the fastener means on the disc-like clamping member, thus resulting in adjustability between the clamped members and to provide a means of supporting a variety of shaped members to be clamped by the clamping link/separate fasteners assembly and avoiding the need to manufacture many U-bars (b2) with different accommodating shapes for the various shaped members. [See answer, page 3; footnote added.]

We will not support the examiner's position. Initially, we cannot agree with the examiner's finding that Poitier in Fig. 11 teaches a disc-like clamping member having four slots. Instead, as plainly depicted in Figs. 10 and 11, the members a<sup>1</sup> are two separate, generally rectangular plate-like members (note also, e.g., translation, page 3, line 2) which, instead of having "slots" as labeled by the examiner in the copy of Fig. 11 attached to the answer, simply have round holes therein (note also translation, page 5, lines 11 and 12). We further fail to find any suggestion for modifying Poitier's embodiment of Fig. 11 to include slots having a length greater than their width in view of Poitier's embodiment of Fig. 42. More specifically, in the

embodiment of Figs. 10 and 11 of Poitier fasteners in the form of U-shaped stirrups extend from the opposite sides and in the

opposite directions from two spaced-apart generally rectangular plates  $a^1$  (having round holes therein in order to accommodate the legs of the stirrups). By such an arrangement rod-like members are clamped to opposite sides of the spaced-apart plates  $a^1$ . On the other hand, in the embodiment of Figs. 41 and 42 of Poitier fasteners in the form of U-shaped stirrups extend from the same side and in the same direction from a disc-like member (having arcuate slots therein in order to accommodate the legs of the stirrups). By such an arrangement rod-like members are clamped to each other on the same side of the disc-like member. Thus, Poitier in the embodiment of Figs. 10 and 11 and in the embodiment of Figs. 41 and 42 discloses two entirely disparate and distinct structures for clamping rod-like members together and, in our view, the examiner has impermissibly relied on the appellant's own teachings for a suggestion to modify Poitier's embodiment of Figs. 10 and 11 in light of the embodiment of Figs. 41 and 42 in the manner proposed. Even if we were to agree with the examiner that it would have been obvious to utilize separate

Appeal No. 97-1153  
Application 08/335,939

bolts and connecting links in lieu of the stirrup-type fasteners of Poitier in view of the teachings of Daniell, there is nothing in Daniell which would overcome the other deficiencies of Poitier which we have noted above.

There is simply nothing in the relied on prior art which would fairly suggest the extensive modifications of the embodiment of Figs. 10 and 11 that would be necessary in order to arrive at the clamping apparatus as set forth in independent claim 1. This being the case, the decision of the examiner to reject claims 1-3 and 6-8 under 35 U.S.C. § 103 based on the combined disclosures of Poitier and Daniell is reversed.

**REVERSED**

HARRISON E. McCANDLISH	)	
Administrative Patent Judge	)	
	)	
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	)	
IRWIN CHARLES COHEN	)	BOARD OF PATENT
Administrative Patent Judge	)	APPEALS AND
	)	INTERFERENCES
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Appeal No. 97-1153  
Application 08/335,939

JAMES M. MEISTER )  
Administrative Patent Judge )

Appeal No. 97-1153  
Application 08/335,939

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